

AO 243 (Rev. 5/85)

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

02-60385

United States District Court		District SOUTHERN DISTRICT OF FLORIDA	
Name of Movant PETER HOLLAND		Prisoner No. 01091-265	Case No. 00-6317 clw
Place of Confinement YAZOO FCI : P.O. BOX 5000 : YAZOO CITY, MS. 39194-5000		FEDERAL BUREAU OF INVESTIGATION	

UNITED STATES OF AMERICA	v.	PETER HOLLAND (name under which convicted)	MAGISTRATE JUDGE SORRENTINO
--------------------------	----	---	---------------------------------------

MOTION

1. Name and location of court which entered the judgment of conviction under attack UNITED STATES DISTRICT COURT: SOUTHERN DISTRICT OF FLORIDA

2. Date of judgment of conviction MARCH 29, 2001

3. Length of sentence 57 MONTHS

4. Nature of offense involved (all counts) VIOLATION OF 8 U.S.C. § 1326 (a)(b)(2), Illegal re-entry in the U.S.A.

5. What was your plea? (Check one)

(a) Not guilty	<input type="checkbox"/>
(b) Guilty	<input checked="" type="checkbox"/>
(c) Nolo contendere	<input type="checkbox"/>

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

6. If you pleaded not guilty, what kind of trial did you have? (Check one)

(a) Jury	<input type="checkbox"/>
(b) Judge only	<input type="checkbox"/>

7. Did you testify at the trial?
Yes ☐ No ☐

8. Did you appeal from the judgment of conviction?
Yes ☐ No ☒

FILED BY MAJ

02 MAR 20 AM 11 32

CLERK OF DISTRICT COURT

S.D. OF FLA.

25

AO 243 (Rev. 5/85)

9. If you did appeal, answer the following:

(a) Name of court _____

(b) Result _____

(c) Date of result _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?

Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court United States District Court---Southern District of Florida(2) Nature of proceeding MOTION FOR REDUCTION OF SENTENCE BASED ONGUIDELINE AMENDMENT PURSUANT TO 18 U.S.C.A. § 3582(C)(2)(3) Grounds raised Based upon the new guideline amendments that went into effect11/01/02, Amendment 632 of the U.S.S.G., Petitioner should have not ~~have~~~~have~~ been sentenced to 57 months as called for under the guidelines atthe time he was sentenced. At that time, the court had no discretion to depart from the 16 level enhancement called for under the guideline §2L1.2(b)(1)(A). The new guideline now allows Judges some discretion and with these new guidelines, Petitioner should have only been enhanced by 4-8 levels.

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒(5) Result The new guidelines, Amendment 632, were not included in §1B1.10(c), which states all the retroactive applicable Amendments.(6) Date of result The Court has not made a ruling on my Motion as of yet.

(b) As to any second petition, application or motion give the same information:

(1) Name of court NONE

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☐

(5) Result _____

(6) Date of result _____

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☒

(2) Second petition, etc. Yes ☐ No ☐

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

PLEAD GUILTY

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all ground in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: THE 16 POINT ENHANCEMENT UNDER SENTENCING GUIDELINE 2L1.2(b)(1)(A) AMOUNTED TO CRUEL AND UNUSUAL PUNISHMENT AND CLEARLY IN VIOLATION OF THE EIGHTH AMENDMENT TO THE CONSTITUTION.

Supporting FACTS (state *briefly* without citing cases or law) PETITIONER PLEAD GUILTY TO ONE COUNT OF ILLEGAL RE-ENTRY INTO THE U.S.A. AFTER DEPORTATION FOR AN AGGRAVATED FELONY UNDER 8 U.S.C. § 1326 (a),(b)(2). HE WAS SENTENCED UNDER GUIDELINE §2L1.2(b)(1)(A), WHICH CALLED FOR A 16 LEVEL ENHANCEMENT. AT THAT TIME, COURTS HAD NO DISCRETION TO MAKE ANY TYPE OF DEPARTURES. THIS LEFT THE COURTS WITH MUCH DISPARITY IN SENTENCING ON THESE OFFENSES. PETITIONER'S ALLEGED PRIOR AGGRAVATED FELONY THAT TRIGGERED THIS 16 LEVEL ENHANCEMENT WAS A SIMPLE OFFENSE OF GRAND THEFT, COMMITTED ON APRIL 7, 1989, OF WHICH HE WAS SENTENCED TO A TERM OF 18 MONTHS PROBATION. THE SENTENCING COMMISSION HAS NOW RECOGNIZED THIS "DISPARITY" PROBLEM AND RECTIFIED IT, BUT FAILED TO MAKE IT RETROACTIVE, BUT THESE NEW GUIDELINES ABSOLUTELY PROVE PETITIONER'S SENTENCE TO BE HARSH.

Ground two: _____

Supporting FACTS (state *briefly* without citing cases or law): _____

C. Ground three: _____

Supporting FACTS (state *briefly* without citing cases or law): _____

D. Ground four: _____

Supporting FACTS (state *briefly* without citing cases or law): _____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: _____

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?
Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing DARYL WILCOX , Esq. : FEDERAL PUBLIC DEFENDER

FT. LAUDERDALE, FL., 101 NORTHEAST THIRD ST., SUITE 202, FT.
LAUDERDALE, FL. 33301-1100

(b) At arraignment and plea (SAME)

(c) At trial _____

(d) At sentencing (SAME)

(c) On appeal _____

(f) In any post-conviction proceeding _____

(g) On appeal from any adverse ruling in a post-conviction proceeding _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☐

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

(date)

Signature of Movant